(Testimony of Henry Lester Pineda.)

A. That was the other——

Q. I am talking about one particular incident.

A. No.

Q. In other words, all of these eggs that were candled on this occasion came out unmarked by the candlers?

A. Yes. Well, I don't know whether this case called for initials, some cases call for just initials. You put an initial on any case the inspector would reject then you knew which girl put it up, [940] and speak to her about it. I don't remember whether this case bore the girl's initials, or not.

Q. While the Colonel was in the candling room with his assistants—the two assistants were soldiers, were they not? A. Yes.

Q. In soldiers' uniforms? A. Yes.

Q. Do you know whether either of them was an officer?

A. I believe two were officers. Usually that is—they would bring an officer and I am sure the driver would be a sergeant.

Q. Was the driver out there on that occasion?

A. No.

Q. Were they all? A. I don't know.

Q. When the particular cases are selected, you removed those that didn't have a full cover, is that it? A. Yes.

Q. So the method that you used to take away, according to the testimony, eggs approved by Colonel Foster was to take away any case of eggs that had a double cover? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Had a two-piece cover?

A. That's right.

Q. Well, all of those cases had been placed at that time in close proximity to the candling room that Colonel Foster was going to use? A. Yes.

Q. Do you recall that you took some of them away? A. Yes.

Q. And you put them where?

A. Into the latter room. To the latter room, I believe it was.

Q. What did you do with them?

A. Just left them there.

Q. Just left them there?

A. Yes. They had a partition [941] where the walls went, the door went. You turn to the right or left and they can't be seen.

Q. Then in connection with the removal of the cases, you then substituted some other cases?

A. That's right.

Q. Those were cases that had a full cover on, is that right?

A. No, these were cases that I didn't put any covers on when I put them into the candling room. If I put full covers on it was time to take them back. It made is easier for me to make out. I did put covers on.

Q. Had the covers been placed upon all the sample cases in the presence of the Colonel?

A. No.

Q. But the cases were of the cases that you brought out? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Had you taken them off?

A. They didn't place any covers on when they came out. We knew a certain amount were to be placed in the butter room.

Q. But there were marks on the cases?

A. Yes, my mark.

Q. So you would mark those cases that you put in the butter room? A. Yes.

Q. Had you marked them with a dash or the circle? A. Yes.

Q. You put covers on top of them?

A. That's right.

Q. They were then brought out, is that right?

A. Yes.

Q. What was done to the cases before they were tendered to Colonel Foster?

A. I dabbed them with ink, according to Colonel Foster's——

Q. Similar to Colonel Foster's brush?

A. Yes. [943]

Q. You had a brush for that purpose?

A. We had one.

Q. You splashed the case with what color ink?

A. Sort of purplish ink.

Q. Will you describe that brush, please?

A. Well, just an ordinary stenciling brush, about four inches long.

Q. How wide was the brush?

A. About an inch, an inch and a half in diameter; about an inch or an inch and a half.

Q. Did you have a bucket of paint?

(Testimony of Henry Lester Pineda.)

A. Yes, a bottle.

Q. A bottle? A. A bottle.

Q. A bottle? A. Yes.

Q. How large a bottle of ink did you have?

A. I don't recall how large it was.

Q. You don't recall. Would it be as large as this stand? A. As large as what?

Q. Yes, as large as the light stand.

A. Oh, no.

Q. Would it be as small as this stamp?

A. It would be about that one-pound box of butter, about that high.

Q. About this size?

A. Yes, about that high, I mean.

Q. It was a bottle? A. A bottle of ink.

Q. It was a bottle of ink that size?

A. About that high.

Q. How large was the stopper, the neck of that bottle? A. Not very big.

Q. Pardon me?

A. About the regular—the little finger, the size of my thumb, I guess.

Q. How would you get the purple ink on the brush? [944]

A. Well, an egg can cover, a can of eggs, they have covers, and we used to pour a little ink in it.

Q. And then put the brush in? A. Yes.

Q. Where did this operation take place?

A. I had that already prepared in the butter room.

Q. You would then dab the case? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. The dab would be similar to the mark that Colonel Foster made, it that right? A. Yes.

Q. When you shoved the case of eggs in to Colonel Foster did you have any particular method of shoving the eggs in? A. No.

Q. Was it not a requirement that every case of eggs would be shoved in to an inspector in a candling room, that whatever marking he had placed on the case be shoved in first?

A. I don't recall that; nobody ever told me that.

Q. Nobody ever told you that? A. No.

Q. Well, whether that was a rule or not, that was not the method that you used in shoving cases of eggs in to Colonel Foster on that date?

A. No.

Q. So that I have this square, Mr. Pineda, on this particular occasion which Colonel Foster and the two assistants were in the plant of Nye & Nissen, they were in a candling room after selecting eight or ten or twelve or a certain number?

A. Yes.

Q. And that you removed part of those samples while they were in the candling booth, and put them into another room, and [945] simulated the mark they had put on them and then brought them back and shoved all those cases in to Colonel Foster?

A. Mr. Goddard helped me.

Q. He helped you? A. Yes.

Q. Well, then, two men did what I have just described?

A. Even Mr. Menges, and when they started we used to all get together and get it going.

(Testimony of Henry Lester Pineda.)

Q. Those are the things that you and Mr. Goddard did in respect to this particular occasion on that day? A. That's right.

Q. Did those cases pass inspection?

A. Yes.

Q. What happened to the cases after they were inspected in the manner that your have described?

A. Well, I got the sample cases that I had in the butter room and I put them back and took out the cases of eggs and I placed the cut-outs, I brought the cut-outs back onto the floor.

Q. In other words, after the sampling was finished. A. Yes.

Q. You then went into the butter room and you brought back to the floor of Nye & Nissen the number of cases that you had secreted in there and substituted the marked cases?

A. Yes. I replaced the marked cases that I put on the good cases of eggs, where it says "Bluxome"; there, we have a sliding door, there, that used to go up, we used to hide some there, and I put the cases there and pulled out what I wanted.

Q. Those would be the cases after he had inspected them?

A. No, those were the cases that—the sample cases that I [946] gave to the inspector, but then I replaced them with the case of cut-outs.

Q. In other words, he had selected some cut-outs? A. Yes.

Q. You had taken those cut-outs away from him?

A. Yes.

Q. And you had taken some other cases that you

(Testimony of Henry Lester Pineda.)

had put a mark on the boxes and substituted them for the cut-outs? A. Yes.

Q. Then when the Colonel and his two assistants had finished the inspection you took back those sample cases and brought them back where the cut-outs——

A. No, I didn't wait for them to finish the inspection. Just when they are getting to the second to the last case of eggs Mr. Goddard asked would he want any more cases of eggs.

Q. It was customary during the entire period of the inspection for three Army men to be present in that booth, that candling booth? A. Yes.

Q. If there were eight, or ten, or twelve cases of eggs it would take a considerable length of time to inspect them by an Army inspector?

A. It depends.

Q. How many hours?

A. I don't know. It depends how close they were inspecting them.

Q. So you would find out when he was candling the last case of eggs and you would have the time, and you would bring back the cut-outs, is that right?

A. Yes.

Q. On the cut-outs, had the tops been taken off?

A. No.

Q. So when the cut-outs were brought back where were they in respect to the eggs that were previously candled by the [947] inspector?

A. I believe some of the cut-outs—I believe we left all the cut-outs right in front there.

Q. When the inspector and his two assistants

(Testimony of Henry Lester Pineda.)

came out from behind the candling room, how many cases of eggs would there be in the vicinity of the place where you had kept the eggs that they were sampling?

A. In sight of the inspectors, just the amount they had picked.

Q. The same number?

A. The same number.

Q. So there had been a complete substitution when they came back, is that right? A. Yes.

Q. And the cut-out eggs had been replaced that had his mark on and the sample cases where you had simulated the mark had been returned to that room, is that right? A. That is right.

Q. Then what happened after the inspector came out?

A. Well, after the inspector—while they were over there, Ruby first starts getting the inspector and myself ready for this inspection, then he goes back up to where we have the rest of the cases of eggs and starts grading out those flats and takes away the samples—not all he sees, I guess—he takes away samples and starts straightening out trays, takes away samples.

Q. That was all done after the Colonel came out? A. No, when he is inside.

Q. You are talking about the trays out of which these eggs were selected originally, is that right?

A. That is correct. [948]

Q. And by Ruby you mean Mr. Goddard?

A. Mr. Goddard.

Q. In addition to the operation in relation to sub-

(Testimony of Henry Lester Pineda.)

stituting the cases, there was something done with the flats of eggs that the samples had been selected from? A. Yes.

Q. What was there to do?

A. He straightened them out, straightened some out and then took some of the samples away.

Q. What samples would you take away?

A. Just have some samples left on those flats.

Q. Were they all taken away?

A. I don't know how many, but taken enough so I can go through the same procedure.

Q. You had put twenty on, yourself?

A. Yes.

Q. How many others were on without your knowledge? You, of course, do not know?

A. No.

Q. So, in addition to this operation of substituting the marking on the case and changing the selected eggs to unselected eggs, and then changing them back, there was still another operation while Colonel Foster and his two assistants were in that room, which consisted of dismantling those cases of eggs which he had inspected and where you had interspersed the sample cases all through the lots; those cases were broken down and the sample cases removed, is that right?

A. I wouldn't say all of the sample cases were removed, because that wouldn't be so hot. After all, it is up to us to let him know if any inspector is coming down, and he usually has Jimmy Nix or the driver helping him. Of course, if there was no one

(Testimony of Henry Lester Pineda.)

he would call me. And Menges would take care of the inspectors in the candling room. And the girls, give orders not to make things too obvious.

Q. The three men, Mr. Menges, Mr. Pineda, and Mr. Goddard, were working together in this operation?

A. For a certain length of time, yes.

Q. And part of that operation, in addition to the part that you described in relation to inspection, was to take the tray of eggs, 30 cases of eggs on a tray, and dismantle as many of those trays as possible and take out as many sample cases as possible, is that right?

A. Yes.

Q. You refer to them as sample cases; what you refer to by that is the grade A eggs, is that right?

A. Yes.

Q. You had already assembled these eggs in a manner so that the Grade A eggs would be dispersed throughout those trays so that there would be a reasonable likelihood that the inspector would get a fair share of the grade A eggs for inspection, is that right?

A. Yes, we put the flats up against the walls, but we wouldn't put so many sample cases on those trays. We put some, but we wouldn't put so many. It is near the front where the inspector picked out a certain amount. The first two trays, maybe. Tried to make it in two aisles, usually, so you can pick a certain amount.

Q. Mr. Pineda, is it not a fact that uniformly when an Army inspection was called for at Nye & Nissen, and on the occasion [950] you are talking

(Testimony of Henry Lester Pineda.)

about, that the trays of eggs to be inspected by the Army were brought out on the floor so that they formed islands so the inspector can walk around every tray of eggs? Isn't that a uniform method of setting up eggs for Army inspection?

A. So that the inspector can barely walk around each case of eggs.

Q. Aren't there eggs brought out of a substantial pile, rather, all grouped together; when the Army inspector comes in are they not brought out so the inspector can walk around each tray of eggs?

A. No, they are not taken out of a group. When we place them they are placed in that same spot there. That is the reason we did a lot of sampling of the cases, because it was too hard for the inspector to step over. I was the smallest, so I had to do that a lot of times to make it easy for the inspector. That is the reason they started giving us the stamps.

Q. I ask you again if it was not the fact that uniformly—not only on this occasion but uniformly—where an Army inspection was involved that the flats of eggs were not brought out in the middle of the floor so the Army inspector could walk around the flats of eggs?

A. No, that was never done.

Q. That was not done on this occasion, either, was it? A. No.

Q. How long do you think it took to assemble in the first instance a flat of 30 cases of eggs in a manner so that the high grade eggs would be interspersed in that flat, the first operation? How long

(Testimony of Henry Lester Pineda.)

did that take? A. To place the samples?

Q. Yes.

A. Oh, it didn't take long, because on the way up—we could go all around the cases of eggs. It is out in the middle before he puts it awa

Q. How long would it take in ti ? Ten minutes?

A. Well, if there is two men they can probably do it in about three minutes, four, five—it all depends on which way they want to place the samples.

Q. You have testified, Mr. Pineda, that your original operation was to build up on a tray about 24 cases of cut-out eggs and build up on another tray your Grade A eggs? A. Yes.

Q. And then later you would break down the cut-out tray and build it up with Grade A eggs?

A. No. If Ruby wanted to place some sample cases in between, he would say, "Give me a tray of 12, give me a tray of 18." Whatever he calls for, we give him that many on the tray.

Q. How long would that take to build one flat?

A. It all depends. If they are going to top off with six on the top, we could do it in two minutes.

Q. On this occasion is that what you did?

A. No, we always did more than that.

Q. After the Army inspectors were in that room and you went to dismantle the same flat of eggs, how long would it take?

A. Oh, it would take about—two men working, we would do it in about half an hour, easy.

Q. There were two men working, weren't there?

(Testimony of Henry Lester Pineda.)

A. Yes. [952]

Q. Do you know what would happen if an Army inspector walked out of that candling room and saw you tampering with that flat of eggs?

A. I don't believe they could have done anything, unless they knew what they were doing.

Q. I say, do you know what would happen?

A. Nothing.

Q. Nothing would happen?

A. Not to my knowledge.

Q. After all those things had been done, after the inspection was complete, and after this particular order was accepted, what then was done with those eggs, with those cases of eggs?

A. Stamped.

Q. Who stamped them?

A. I believe I stamped quite a few of them.

Q. So that Colonel Foster—who gave to you the stamp? A. Colonel Foster.

Q. He gave you his Army VG stamp, is that right? A. Yes.

Q. Did you stamp them in his presence?

A. Well, he couldn't watch me stamping every case, but he was standing out in front of the aisle. I would go in. That is why the trays were so close together.

Q. While you were stamping the cases, what were the two men doing that came in with him?

A. I don't know. I don't remember.

Q. Did you stamp every case? A. Yes.

Q. And when you finished did you hand the

(Testimony of Henry Lester Pineda.)

stamp back to Colonel Foster? A. Yes. [953]

Q. Did you see what happened to the eggs after that? A. No.

Q. Pardon me? A. No.

Q. Do you know whether they ever left the plant of Nye & Nissen?

A. Oh, they left the plant.

Q. Did you see them leave?

A. I don't recall if I saw them leave, or not. So many eggs came and went there, I wouldn't know when it did go. But when I didn't see them in the aisles any more, I took it for granted our boy delivered them.

Q. I beg your pardon?

A. I took it for granted that they were delivered.

Q. How many in this warehouse, and in this time in the week when this incident occurred, how many cases of eggs were handled on the floor of Nye & Nissen in the week in which this incident occurred, if you know? A. Thousands.

Q. Thousands? A. Yes.

Q. Tens of thousands?

A. I couldn't tell you. I know we had a large quantity of eggs come from Petaluma about every other day, every day, more came from Santa Cruz, certain days of the week.

Q. In what quantities would they come from Petaluma?

Mr. Hippeli: I object to that as immaterial, your Honor.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: I submit the objection, your Honor.

The Court: Read the question.

(Question read.)

The Court: He may answer if he knows. [954].

A. Between five and six hundred, I believe, at a time.

Mr. Faulkner: Q. A day? A. Yes.

Q. What quantities of eggs were coming into the plant of Nye & Nissen in this particular week and about that time from Santa Cruz?

A. We didn't get many from Santa Cruz. They usually came on Saturday, maybe 75 or 100 cases.

Q What quantities of eggs were coming into that plant of Nye & Nissen from Utah?

A. We used to get quite a lot from Utah, but I don't know how many we got this week, if any.

Q. What quantities of eggs were coming in your plant from railroad cars?

A. Usually Utah sent us a lot through railroad cars. When they couldn't have that, they used to have a big truck and trailer—I mean a semiback up there about, oh, I don't know how many.

Q. From all sources, what would your recollection be of the normal number of cases of eggs handled on the floor of the plant of Nye & Nissen in any week during the month that you are speaking of?

A. Oh, I would say maybe around five thousand, I guess.

Q. On any day in that period there were unques-

(Testimony of Henry Lester Pineda.)

tionably large quantities of eggs stacked upon the floor of the warehouse of Nye & Nissen, is that right? Is that correct? A. Yes.

Q. And a thousand, would not be an extravagant figure, would it? A. No. [955]

Q. Mr. Pineda, when was the last time you saw this brush that you say you used on the cutout cases of eggs in the butter room or wherever it was on the occasion that Colonel Foster was there to inspect this particular lot of eggs?

A. The last time I saw it I guess was when we moved.

Q. When you moved to 17th and Missouri?

A. Yes.

Q. When was that?

A. Oh, that was in 1942 sometime.

Q. Was it there when you left Townsend Street?

A. I believe I did see it when we moved.

Q. You then saw it right up to the time you left?

A. Townsend Street.

Q. Is that right? A. Yes.

Q. And it was the same brush?

A. To my knowledge, yes.

Q. In the same period of time that Colonel Foster was out there on the occasion we have been talking about in this examination were there any other egg inspections for the Army going on during the same period of time?

A. I believe there must have been. I don't recall. We did have a lot of different inspectors coming in. It wasn't always Colonel Foster. Some other inspector which we had.

(Testimony of Henry Lester Pineda.)

Q. Did you have any inspectors by the Department of Agriculture in this same period of time?

A. Yes, we did.

Q. And how many women were working in the candling room during the week in which this incident occurred?

A. Well, it all depends, eight or ten, sometimes eight, sometimes ten. I [956] couldn't tell you. Sometimes a couple of girls took a couple of weeks off, a week off. Sometimes when we couldn't replace them Ed Menges would go in and candle and sometimes he wouldn't.

Q. Do you remember an incident in 1942 where an inspector named Moosman came out to the plant of Nye & Nissen to inspect some eggs for the Department of Agriculture, in the spring of 1942?

A. Moosman, yes.

Q. Right? A. Moosman?

Q. Moosman? A. Yes.

Q. Do you remember that incident?

A. Yes.

Q. Do you remember an incident when he came out? A. Yes.

Q. Do you remember Mr. Hippeli asked you to take an incident when the inspector came in the spring of 1942? A. Yes.

Q. And you gave some testimony on your direct examination?

A. Well, I answered questions, yes.

Q. Do you remember testifying to an incident where Mr. Moosman of the Department of Agricul-

(Testimony of Henry Lester Pineda.)

ture was involved in the inspection of some eggs?

A. Yes.

Q. Do you remember that incident?

A. Yes.

Q. There was only one incident that you referred to relating to Mr. Moosman from the Department of Aggiculture inspecting eggs in the spring of 1942, is that right?

A. I don't know.

Q. Don't you remember?

A. No, I just answered questions.

Q. When you read your testimony over, over the week-end, you remember you only referred to one incident in the spring of 1942 [957] where Mr. Moosman was involved, isn't that right?

A. Well, to tell you the truth I didn't get up to Mr. Moosman.

Q. You did not get up to him? Neither has the prosecution, for that matter. They haven't gotten beyond you. The late spring of 1942—you remember that incident, is that right? A. Yes.

Q. On your examination you were exhibited, or there was shown to you, rather, Exhibit U. S. 68, U. S. 67, U. S. 51. You remember identifying all of these labels, 50 for Identification, 49 for Identification, 48 in evidence, 47 for Identification, 46 for Identification, 45 in evidence, 44 for Identification, and 43 for Identification. Do you remember when Mr. Hippeli showed you those various labels?

A. Yes, I remember.

Q. As far as these particular labels were con-

(Testimony of Henry Lester Pineda.)

cerned had you ever seen them before you came into court?

A. You mean the same type of label?

Q. No, these particular labels?

A. Yes, I saw some of those before, yes.

Q. They were exhibited to you by EBI agents, were they?

A. I was asked if I had ever seen similar labels, yes.

Q. So you are familiar with the particular labels that you were asked to identify when you sat up here on the witness chair on your direct examination?

A. What do you mean if I am familiar?

Q. Your have seen them before?

A. I have seen them, yes, but I can't tell you what was written on them or anything. I knew they had stamps on them. [958]

Q. Each of those labels is similar to a label that you had seen in the plant of Nye & Nissen when you worked there, is that correct?

A. That is right.

The Court: It is now four o'clock. We will take an adjournment until tomorrow morning at ten o'clock. The jurors may be excused.

(The jurors retired from the court room, after which a discussion between Court and counsel took place. At the conclusion of the discussion the scale was marked Defendants' Exhibit N for Identification, and the three cartons of butter previously referred to were

(Testimony of Henry Lester Pineda.)

marked Defendants' Exhibit for Identification O, P and Q, respectively.)

(An adjournment was thereupon taken until tomorrow, Wednesday, January 30, 1946, at 10:00 o'clock a.m.) [959]

Wednesday, January 30, 1946, 10:00 a.m.

The Clerk: The United States vs. Nye & Nissen.

The Court: Call the roll.

(The roll of the jurors was called, all jurors being present.)

HENRY LESTER PINEDA,

recalled.

Cross Examination (Resumed.)

Mr. Faulkner: Have you those exhibits, Mr. Welsh, that we had last night?

Q. On last evening, Mr. Pineda, I had just completed at the time of the adjournment in showing you certain exhibits, some marked in evidence and some marked for identification, that purported to be the labels of Nye & Nissen that you had testified that you had seen during the period of time that you worked in Nye & Nissen, similar labels that I showed you yesterday; that is correct, is it not?

A. That is right.

Q. You do not know that you have ever seen other than in connection with this case the particular labels that I enumerated prior to your coming

(Testimony of Henry Lester Pineda.)

into contact with the FBI agents, is that right?

A. Correct.

Q. I show you this label, which is U. S. Exhibit No. 67, I ask you to look at it. When did you leave the employ of Nye & Nissen?

A. In 1942, about October, 1942. [960]

Q. Pardon me? A. About October, 1942.

Q. In October of 1942? A. Yes.

Q. At that time you had just been out there for a period of six or seven weeks, is that correct?

A. In this new plant, yes.

Q. Then there was an interval when you weren't there before that for some period of time, isn't that right? Didn't you leave their employ and then come back later?

A. Yes, I came back to them the following year, about February, ~~sometime~~ in February, March.

Q. Of the year 1942? A. 1943.

Q. In other words, the long period of your employment terminated in October, 1942?

A. Yes.

Q. Then you came back for a period of five or six weeks, or a short period of time in February of 1943, and I think you said you worked at nights?

A. Yes.

Q. Do you recognize Exhibit 67 as an exhibit that is similar to the type of labels that were used in the plant of Nye & Nissen in 1942 and prior thereto? A. Yes.

Q. Were labels of that type put on cases of eggs

(Testimony of Henry Lester Pineda.)

in the plant of Nye & Nissen on Townsend Street by you at any time? A. Yes.

Q. On frequent occasions? A. Yes.

Q. You will observe on that particular label, Mr. Pineda, a letter "P". You see the letter "P"?

A. Yes.

Q. Did you ever put a letter "P" in a stencil letter on a label [961] in Nye & Nissen's plant on Townsend Street?

A. No, I don't remember putting the letter "P" on.

Q. Well, similar to the letter "P" that appears on that particular exhibit 67, or that appears on exhibit 45, did you ever see anyone place a letter "P" on a label, whether it was a green label similar to the one you have, or a blue label, or any other colored label, a stencil letter "P" similar to the letter "P" on Exhibit 45 which I showed you, and Exhibit 67, which you are holding in your hand?

A. When I was there I saw most of them by our own handwriting. They had these letters there, but I never did use any.

Q. In other words, you have no recollection of ever observing anyone put a letter "P" on any label?

A. Yes, they had cases with a letter "P" on them.

Q. Did you ever observe anyone in the plant of Nye & Nissen on Townsend Street put a letter "P" on those labels?

(Testimony of Henry Lester Pineda.)

A. Well, it was used. I can't say I saw them putting it there.

Q. Do you mean that you have seen labels on cases of eggs in the plant on Townsend Street that had a letter "P" on them? A. Yes.

Q. But your never saw anyone in that plant put that letter "P" on the label?

A. We had the letter there.

Q. Mr. Pineda, did you ever see anybody put a letter "P" on those labels in the plant of Nye & Nissen on Townsend Street?

A. I didn't actually see them, no. [962]

Q. No; all right. Did eggs come into the plant of Nye & Nissen from Petaluma? A. Yes.

Q. In large quantities? A. Yes.

Q. Would all of those cases contain a label similar to Exhibit 65, or the series of exhibits which I showed you at the termination of yesterday's session? A. The majority of them would.

Q. By a majority, Mr. Pineda, that is the greater proportion of the eggs coming from Petaluma had a label on the end of them, either green or blue, or whatever color it may be? A. Yes.

Q. But there is no question that a large quantity came in without labels, is that right?

Q. Did you ever observe eggs come in from the plant of Nye & Nissen in Santa Cruz?

A. Yes.

Q. Did they bear a label similar to Exhibit 65 and Exhibit 45, that I showed you?

(Testimony of Henry Lester Pineda.)

A. Some, but a lot of them didn't bear it from down there.

Q. Other eggs came in from other sources that were not Nye & Nissen plants, isn't that correct?

A. Yes.

Q. Did they bear a Nye & Nissen label?

A. No.

Q. What does the letter "P" stand for, Mr. Pineda, on Exhibit 43?

A. It all depends what we were putting up.

Q. No. I am not asking you that. There is a label with a letter "P" on it. What does that "P" stand for, if you know?

A. I don't know, because I didn't put up this case. Whoever [963] put that one up is nailing up the case, he puts on what he wants to signify the type of egg is. We would put a "P" for Pee-wee, or we would write "Pee-wee" on them. It is up to the man nailing the boards to do that according to what he wants to signify the case to be.

Q. Has the letter "P" a definite meaning on that label?

A. Not necessarily, no.

Q. It has not. So your testimony is that the letter "P" represents whatever the man who put up the case intended it to represent? A. Yes.

Q. Is that right? A. That is right.

Q. If you have never seen a man affix a letter "P" on a label how do you know from your own knowledge that that is a mark that is supposed to

(Testimony of Henry Lester Pineda.)

indicate something to the man who put up the case of eggs? A. Well——

Q. From your own knowledge.

A. From my own knowledge? We have say five or six cases of eggs right there, putting the labels on. In the meantime I am doing something else, I come back, they have a letter "P" on them. Naturally, I would say the man working alongside me put it on, but I can't say—I can't say I watched it and saw him do it. I probably did and I probably didn't. I don't want to lie about it.

Q. Have you seen an instance where you have seen a full case with the label on like the one I have shown you, Biddy eggs, green color, without a letter "P" on, and then come back in [964] a short time and saw where someone had put a letter "P" on it?

A. Yes. It didn't have to be, necessarily, green, like that was there.

Q. How many times have you seen that done?

A. I really don't know how many times.

Q. Frequently?

A. Yes. If the fellow wants to do the same we would do it one way; if not, he would write "Pee-wee" on it; or whatever he wants to signify it to be.

Q. Did you ever see a man write on a label the word "Pee-wee"? A. Yes.

Q. How would he write that, Mr. Pineda?

A. With a pencil.

Q. Pencil, or would he stencil it?

A. Pencil.

(Testimony of Henry Lester Pineda.)

Q. Have you ever seen that done in the year 1942? A. 1942?

Q. Yes, up to October.

A. Practically, I would say at least every other day.

Q. Every other day? A. About.

Q. You mean in the year 1942? A. Yes.

Q. Every other day someone would be marking the words "Pee-wee" on cases of eggs?

A. Well, all depends what they are candling. If they are candling Mediums, every other day, but I would say around that.

Q. Around every other day?

A. Well, about every three days.

Q. Every other third day? A. About.

Q. Would that be during the year 1941?

A. Yes. [965]

Q. People would be candling eggs and every other day someone would write on some of the cases "Pee-Wee"?

A. If they had enough—it all depended on the time of the year. We did it quite a few times——

Q. I am talking about the year 1941, now, when you say that every other day in 1941 you would see some labeled cases with the word "Pee-Wee".

A. Well, when I say every other day, I mean every other day I worked I worked on the bench. Sometimes we are cutting butter, and I would have to be on that maybe two or three months at a time.

Q. What proportion of your time did you devote to working on the bench in the year 1941?

(Testimony of Henry Lester Pineda.)

A. I really can't tell you.

Q. Would it be one-half?

A. No, not quite half.

Q. A third?

A. Well, more or less during the whole year I would say about a third.

Q. A third? A. Yes.

Q. In the third of the time that you were working on the bench—by that you mean the egg bench?

A. Yes.

Q. In that period of time that you were working, was it the practice at every other day you would label some cases with the words "Pee-wee"?

A. It was not the practice. If the girls shoved a lot of cases of Pee-wees out we would do it.

Q. I am not talking about whether the girls labeled them.

A. I said if they shoved out a case of Pee-wees that had a previous mark signifying it was Pee-wees, then we would mark it. [966]

Q. They would re-mark them by writing the word "Pee-wee"?

A. If they had no previous mark, yes. I have marked Pee-wees and Ed did, too.

Q. Have you ever seen a stenciled letter "P" in blue ink on a case of eggs, representing the words "Pee-wee"?

A. To my knowledge, yes.

Q. That is based upon the fact that you would see a stack of eggs and it would have no mark, then

(Testimony of Henry Lester Pineda.)

you would come back in a little while and you saw the latter "P"? A. Yes.

Q. How would you know what type eggs were in that case?

A. Because maybe I put two or three of those cases up and I would probably go to do something else, maybe I would be there labeling, putting labels on it.

Q. Did you ever get any instruction from Mr. Moncharsh, Mr. Smith, Mr. Goddard, Mr. Berman, Mr. Menges or Mr. Whitmore to put a stencil letter "P" on a case of eggs in order that it should represent a Pee-wee egg? A. No.

Q. On your direct examination you were handed a series of cards, U. S. Exhibits 41, 42, 40, 39, 38, 37, 36 and 35. Have you ever seen those cards before?

A. These cards, yes.

Q. Where did you first see them, those particular cards?

A. The FBI showed them to me.

Q. When? A. Oh, I don't recall when.

Q. Well, approximately when.

A. I saw these about a month ago, maybe, I don't remember. I was shown some cards a year or so ago. [967]

Q. What is your best recollection, did you see those cards a year ago?

A. I don't recall whether they showed me some cards a year ago now. I know I saw them a month ago.

Q. Where? A. In this building, here.

(Testimony of Henry Lester Pineda.)

Q. Which FBI agent showed them to you?

A. I believe it was Mr. Magee.

Q. Who else was present?

A. I guess Mr. Hippeli was.

Q. You guess, or do you remember?

A. I think it was Mr. Hippeli.

Q. Right here, Mr. Hippeli?

A. I think so, yes.

Mr. Hippeli: I showed him some cards, Mr. Faulkner.

Mr. Faulkner: Counsel for the Government knows better than to volunteer a statement like that, your Honor. I ask the statement go out. It is neither evidence or a legal objection.

The Court: Read the question.

(The record was read.)

The Court: It may go out.

Mr. Faulkner: Q. Do you know whether prior to that time that you were shown these cards, whether it was a month ago, with Mr. Hippeli being present, whether you had ever seen those cards before that occasion? A. No.

Q. You had not?

A. No, I hadn't seen them.

Q. I show you this card, U. S. Exhibit 35, and ask you whether the writing in red ink, whether you had ever seen a card in the plant of Nye & Nissen on Townsend Street similar to that card? [968]

A. Yes, I seen cards like it down there.

Q. Did you ever see a card similar to that one, and I would ask you to look at it very carefully.

(Testimony of Henry Lester Pineda.)

A. Are you referring to this "Nye & Nissen" back here, or this writing in the back with "Nye & Nisen" here?

Q. No, to the card, that card with everything that it contains. A. The whole works?

Q. The whole works.

A. I have seen cards go out like this. We had them down at Nye & Nissen's, but I can't really say whether they had all this—similar to this type, yes.

Q. In other words, you have seen cards similar to that Exhibit 43? A. Yes.

Q. That were printed, "Nye & Nissen," on one side, and writings on the other side, like the word, "Pee-wee," is that right? A. Yes.

Q. You have never seen a card with a lot of red ink, red pencil marks similar to that used in Nye & Nissen's plant, have you? A. No.

Q. The figure "3" with a circle around it, have you ever seen cards come out from the candling room with the figure "3" with a circle around them?

A. Not that I can recall, no.

Q. The only part of this card that you have ever seen in the plant of Nye & Nissen that is similar to this exhibit is the printed words on the front part of the card where the words "Nye & Nissen" are printed: A. Yes. [969]

Q. And then the words similar to "Pee-wee" or some other designation?

A. Well, "large" and "Small" and the rest of it on the back there.

(Testimony of Henry Lester Pineda.)

Q. That part of the printing?. A. Yes.

Q. In other words, the printing of the firm "Nye & Nissen" and "Large," "Medium," and "Small"?

A. Yes.

Q. And the rest of the printing, and then with a single word, "Pee-wee" or "Large" or "Medium", or whatever it is, is that right?

A. That's right.

Q. You have actually seen them in the candling room and in the plant of Nye & Nissen on Townsend Street? A. Yes.

Q. Have you ever seen it in the plant on Missouri & Seventeenth Streets?

A. I don't recall.

Q. In the year 1942, the last year that you worked there, what was the source of eggs candled in the candling room at the plant of Nye & Nissen on Townsend Street, in the year 1942?

A. What do you mean by "what was the source"?

Q. Where did they come from?

A. Got them from Petaluma, Santa Cruz, brought in by truck.

Q. Have you any recollection at any time of the year 1942 of observing the candlers in the plant of Nye & Nissen candling eggs that came from Petaluma? A. Yes.

Q. Did the eggs come from the plant of Nye & Nissen in Petaluma?

A. As far as my knowledge, yes.

Q. In other words, in the year 1942, did you

(Testimony of Henry Lester Pineda.)

ever see cases of [970] eggs in Nye & Nissen's candling room that came from the plant of Nye & Nissen in Santa Cruz? A. Yes.

Q. In 1941 did you ever see candlers candling eggs that came from the plant of Nye & Nissen in Petaluma? A. Yes.

Q. And from the plant of Nye & Nissen in Santa Cruz? A. Yes.

Q. In the year 1940 have you ever seen candlers candling eggs that came from the plant of Nye & Nissen at Petaluma? A. Yes.

Q. And from the plant of Nye & Nissen in Santa Cruz? A. Yes.

Q. Is that likewise true in the year 1939?

A. That's right.

Q. The greater proportion of the eggs, according to your testimony on direct examination, came from the plant of Nye & Nissen at Petaluma, is that correct? A. Yes. [970-a]

Q. Do you know what a pullet egg is?

A. Yes.

Q. What is it?

A. Like a Pee-wee, smaller than Mediums.

Q. Pardon me?

A. It is a small egg. It is supposed to be the first eggs that chickens lay, or something, I understand.

Q. I want you to tell me what it is. Is it a Medium egg? A. No.

Q. Is it a Small egg? A. A Small egg.

Q. Is a Pee-wee a Small egg? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Is a Pee-wee egg classified in the trade as a Small egg? A. I really don't know.

Q. Are "Pullets" and "Pee-wees" used interchangeably in the egg business, the terms Pullet and Pee-wee Eggs used interchangeably?

A. What do you mean?

Q. Do they use the same words to describe the same thing?

A. To my knowledge, yes.

Q. You testified to a transaction in the summer of 1938 relating to being present when Mr. Goddard used a Department of Agriculture stamp. Do you remember that transaction? A. Yes.

Q. Where did he get that stamp?

A. Upstairs in the main office.

Q. Did you see him go into the main office?

A. I saw him go up the stairs. That was all.

Q. And then when he came back from the stairs he had a box, is that right?

A. That is right.

Q. What time was this occasion that you testified to on your direct examination?

A. It was in the afternoon. [971]

Q. In the afternoon? A. That is right.

Q. Was the plant in full operation?

A. Yes.

Q. And were there, as is usual, somewhere around a thousand cases of eggs on the floor or in the premises? A. Yes.

Q. Now then, what had you been doing prior

(Testimony of Henry Lester Pineda.)

to the time that you observed Mr. Goddard go upstairs on that particular occasion?

A. I believe I was in the breaking room.

Q. You were in the breaking room?

A. Yes.

Q. And it just happened that you came out of the breaking room in time to see him go upstairs?

A. When he came—asked me, told me to clean up, that he wanted me to help him with some work.

Q. Had you been working in the breaking room up until the time that Mr. Goddard requested you to clean up and help him with some work?

A. Yes.

Q. And then you did clean up? A. Yes.

Q. That means that you tidied up the room in which you were breaking these eggs, is that right?

A. I wasn't doing much breaking then. I was washing the Leaker pans.

Q. You were washing the pans? A. Yes.

Q. By the way, Mr. Pineda, in that breaking room you had a method of marking the tops of the containers into which you broke eggs, isn't that right? A. Yes.

Q. How did you mark them?

A. With numbers.

Q. I know, but did you mark it with your finger, chalk, paint [972] or what? A. No, a stamp.

Q. Paint? A. Ink.

Q. Did you have a brush for that purpose?

A. Yes, we had a brush.

Q. Did you have a brush?

(Testimony of Henry Lester Pineda.)

A. What do you mean, did I have a brush?

Q. Yes, did you have a brush that you use?

A. Yes, we had a brush.

Q. Describe that brush to me?

A. It was a regular stencilling brush about four inches long.

Q. You marked them with paint, is that right?

A. With ink.

Q. I mean with ink? A. Yes.

Q. What color? A. Black.

Q. How would you dip the brush into that black ink?

A. I just pour some in the can cover.

Q. In the can cover? A. Yes.

Q. In other words, your pour ink into a can cover and then take that 4-inch brush and mark in black ink the top of those containers that you broke eggs in? A. That is right.

Q. To go back to this occasion, when you had concluded cleaning up your egg breaking room, you then left that room, is that right? A. Yes.

Q. Mr. Goddard did not wait for you to finish, did he? A. No.

Q. And when you came out how many people were on the premises of Nye & Nissen?

A. I believe the girls were in the candling [973] room. I don't remember how many girls were working in the candling room. Mr. Menges was out on the bench, and that is all we had on the main floor.

Q. Then Mr. Goddard went upstairs?

A. Yes.

(Testimony of Henry Lester Pineda.)

Q. And then he came back and he had a box, is that right? A. That is right.

Q. Up to the time that you left the candling room, had you prior to that on that day been breaking eggs or working in that candling room all of the day long? A. Yes.

Q. Then you came back, Mr. Goddard came back, and he had a stamp, is that right?

A. You mean after I came out of the breaking room——

Q. No, after you saw him go upstairs, then he came downstairs? A. Yes.

Q. Now, you did not search him before he went upstairs, did you? A. No.

Q. When he went upstairs, he went upstairs at a point anywhere from one hundred and fifty to two hundred feet from where you came out of the breaking room, didn't he?

A. No, not that far up because I was supposed to let him know when I was ready there. When I started going up he probably saw me and signalled to me like to wait and then went upstairs.

Q. Then he came back and he had a stamp?

A. Yes.

Q. And it was a Department of Agriculture stamp, is that right? A. That is right. [974]

Q. And you saw the stamp? A. Yes.

Q. And that stamp was affixed to certain cases, is that right? A. Yes.

Q. By Mr. Goddard? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Am I correct in that? Do you recall the date on the stamp?

A. No, I never did look at dates on these stamps—on any stamps.

Q. But it had a date similar to the date on the stamp you identified here?

A. Yes, they all had dates.

Q. Then somewhere in that transaction Mr. Goddard left those cases and went over and talked to a man, is that right? A. That is right.

Q. And then he came back, is that right?

A. Yes.

Q. And he gave you the stamp? A. Yes.

Q. And told you to finish stamping some cases?

A. That is right.

Q. Now, there is no question in your mind at all that even though you do not remember the date that that stamp did have a date on it?

A. Yes.

Q. And the date that you were using the stamp was the date that the stamp bore, isn't that correct?

A. Yes.

Q. In other words, to illustrate, we will assume that this occasion was January 30. If it was January 30, the stamp bore the date that this act was being done, is that correct?

A. Well, I couldn't tell you. It might have bore a date two [975] days earlier. I didn't look at the date and I don't remember the date. I took it for granted it was that date.

Q. You didn't look at the date, is that it?

(Testimony of Henry Lester Pineda.)

A. No, I didn't look at the date.

Q. How many cases of eggs did Mr. Goddard stamp in your presence and how many cases of eggs did you continue stamping after he gave you the stamp?

A. We had two—I guess there were about four flats.

Q. That would be——

A. About a hundred—I'm not sure if they were quite full.

Q. Well, the maximum would be 120 cases?

A. Yes.

Q. They might only have 25, so there would be between 100 and 120 cases? A. That is right.

Q. When you were through using the stamp what did you do with it?

A. I gave it back to Mr. Goddard.

Q. What did he do?

A. He put it in his box or something, walked away from me, and walked back. He walked toward the front of the plant, and I walked back—I helped Ed Menges on the bench from then on.

Q. I beg your pardon?

A. I went back and helped Ed Menges.

Q. When you went back to the bench or wherever you walked to and Mr. Goddard walked away from you did he go back upstairs?

A. Well, I figured he went upstairs. I didn't actually see him because I walked away.

Q. In other words, you paid no attention to

(Testimony of Henry Lester Pineda.)

where he went after [976] the incident, is that right? A. That is right.

Q. Mr. Pineda, how many people normally are upstairs in the plant of Nye & Nissen?

A. There is about four girls. Usually there was about three or four men, I would say.

Q. And then Mr. Moncharsh had a private office?

A. Yes. That is counting all the private offices and everything. Mr. Eichler, Mr. Smith, I believe, and Mr. Moncharsh more or less had private offices.

Q. And then there was a large room where the general clerical help were? A. Yes.

Q. That transaction you have fixed in your examination on direct at some time in the middle of 1938? A. That is right.

Q. That is correct. After that you say you saw that stamp used again? A. Yes.

Q. When was that?

A. Oh, a little—maybe about three weeks or a month later.

Q. Do you remember that occasion distinctly?

A. Yes.

Q. Who used the stamp on that occasion?

A. I know it was Mr. Goddard and Mr. Menges were together.

Q. Do you remember on that particular occasion? You remember the particular occasion, don't you? A. Yes, I was helping on the bench.

Q. You were helding on the bench?

(Testimony of Henry Lester Pineda.)

A. Yes, Ruby and Menges were talking. Then they went upstairs and they told me to take it over. Then bench was slow then. At certain times [975] certain girls do things on the bench that is slower work than others.

Q. On this occasion you saw Mr. Menges use this stamp?

A. Yes—I didn't actually see the stamp, but I saw Mr. Goddard standing outside like he did for me, so I took it for granted Mr. Menges was using the stamp, see?

Q. You did not see him though?

A. Well, they have cases—these trays were placed in a certain place so they couldn't be seen as you come into the plant or from the back of the plant.

Q. Did you see Mr. Goddard hand the stamp to Mr. Menges?

A. When I went up there I took a look and saw what they were going to do.

Q. What?

A. I took a look and saw what they were going to do.

Q. You looked where?

A. I looked up toward the middle of the plant.

Q. How far away would that be?

A. That was about 25 feet.

Q. You looked up there and did you see Mr. Goddard hand Mr. Menges a stamp?

(Testimony of Henry Lester Pineda.)

A. I saw him with the box. I saw Mr. Goddard with his box.

Q. Did you ever look in that box?

A. I never got close enough to see.

Q. What?

A. I never got close enough to see.

Q. The closest you got was to the stamp?

A. Yes.

Q. You never did get to the box? A. No.

Q. But you saw Mr. Goddard there with a box, is that right? A. That is right.

Q. Did you see him take the stamp out of the box and hand it to Mr. Menges?

A. I can't say I actually saw him hand it to him because I go back to my work. I can't stare.

Q. After, whether you saw him hand him this stamp or not, did you see Mr. Menges on that occasion stamping some cases?

A. No, but he went into this same thing I did with Mr. Goddard.

Q. Did you then go over and look at the cases?

A. No, I never did.

Q. Had you looked at the cases before?

A. No.

Q. Then what did Mr. Goddard do?

A. Just stayed awhile, and then Mr. Goddard—I saw him go upstairs that time because I happened to be on this bench waiting for Mr. Menges coming back.

Q. Did you say you saw him go upstairs?

A. I saw him go upstairs.

(Testimony of Henry Lester Pineda.)

Q. Mr. Goddard on a normal day would go up and down those stairs how many times?

A. Oh, at least 50, I would say.

Q. On this particular occasion you saw him, you remember? A. Yes.

Q. That he went upstairs? A. Yes.

Q. Did he have the box?

A. Well, when a person walks away from you, you really take certain things for granted: he had the box. The box wasn't left anywhere around there.

Q. In other words, you are taking for granted he took the box downstairs on this occasion. You are taking for granted he [979] gave the stamp to Mr. Menges. And you are taking for granted it was given back to him. And you are taking for granted that he went upstairs with the box, are you?

A. I am not taking for granted he brought it down because when you are walking towards a man you carry something behind your back, but when a man is walking away from you he still carries whatever he has in front of him.

Q. But you never saw him take anything out of that box? A. No, I did not.

Q. Then you have taken for granted Mr. Goddard went upstairs to get a box that had a stamp in it, that he took the stamp out, and gave it to Mr. Menges, aren't you?

A. I saw Mr. Goddard come down with the box.

Q. You did not see him take anything out of the box? A. No.

(Testimony of Henry Lester Pineda.)

Q. You never saw Mr. Menges personally use the stamp, did you? A. No.

Q. And you did not see him return any stamp to Mr. Goddard? A. No.

Q. And you did not see him go upstairs with the box in which you had seen him place a stamp on that occasion, did you? A. No.

Q. Now, Mr. Pineda, do you know what a cold storage egg is? A. A cold storage egg?

Q. Yes? Will you describe that box that you mentioned with a little more detail, please?

A. It was more or less like a cigar box, but to me it seemed like it was, I would say, an [980] inch or two bigger than a cigar box.

Q. I am a cigar smoker, so I can help you in describing a cigar box. Would it be a box that would hold 25 cigars or a box that would hold fifty?

A. Well, which is the one—how large does the fifty go? I don't smoke, so I wouldn't know.

Q. Fifty would be about that high.

A. It was the high one, not a regular flat cigar box. It was more or less the higher type.

Q. Was it a cigar box?

A. I told you I never got close to the box, but as far as I can remember I figured it was more or less of a cigar box.

Q. Mr. Pineda, more or less; was it a cigar box?

A. I don't know.

Q. You never got close enough to find out?

A. No, I did not.

Q. Have you ever seen Department of Agricul-

(Testimony of Henry Lester Pineda.)

ture men come into the plant of Nye & Nissen?

A. Yes.

Q. Did they carry a stamp with them?

A. Yes.

Q. What kind of a box did they carry it in?

A. Oh; they carried it in a little box maybe five inches by two or three, a little box.

Q. They carried it in, in a cigar box, didn't they? A. No.

Q. You have never seen a Department of Agriculture inspector in there carrying a stamp in a cigar box, is that right?

A. Not that I recall, no.

Q. But it was a box that would be about the same size as a cigar box, wasn't it?

A. No, not to my knowledge. It seemed [981] like it was a small box.

Q. To go back to a cold storage egg, what is a cold storage egg?

A. An egg that has been in storage for a certain length of time.

Q. Mr. Pineda, you described an incident in connection with some cold storage eggs, and so that we will have the incident properly identified, it related to Mr. Hand, who does not seem to be here this morning. Do you remember an incident you testified to on your direct examination relating to cold storage eggs and Colonel Hand? A. Yes.

Q. There were certain eggs involved in that incident, is that correct? A. Yes.

Q. When was that incident, do you remember?

(Testimony of Henry Lester Pineda.)

A. In 1941, the early part of 1941.

Q. Now, the first time you saw these eggs that were involved in the incident—you saw the eggs, did you not? A. Yes, I saw them.

Q. Where did you first see them?

A. I saw them in the Nye & Nissen plant.

Q. Having in mind the time with Colonel Hand and that we are talking cold storage eggs, tell me everything that Mr. Moncharsh said to you or in your presence on that occasion?

A. I remember him telling Mr. Goddard to make up the order good because Colonel Hand was very particular—put it up.

Mr. Faulkner: May I have that read? [982]

The Court: Read it.

(Answer read.)

Mr. Faulkner: Q. What else did Mr. Moncharsh say?

A. When we were opening up the cases of storage eggs, that was about the first time we started opening them, we started placing them too high.

Mr. Faulkner: I move that that go out. I am asking him what Mr. Moncharsh said.

The Witness: That is what I am telling you. How do you know what I am talking about, or do you know?

Q. I am merely asking you to repeat what Mr. Moncharsh, who sits there in the court room, said on that occasion.

A. Spread the eggs apart a little more than we would do.

(Testimony of Henry Lester Pineda.)

Q. What? A. Spread the eggs apart.

Q. A little more than you were doing?

A. Yes.

Q. And he also said that Colonel Hand was very particular? A. Yes.

Q. And to fix up a good order for him, is that right? A. That is right.

Q. Was that the entire conversation you heard from Mr. Moncharsh?

A. So far as I can recall, yes.

Q. Did he then walk away? A. Yes.

Q. Do you know who the order was for?

A. The order was for the Army.

Q. Do you know of your own knowledge who the order was destined [983] for?

A. No, but a man puts two and two together. He sees the man come down and examine those eggs. The order was for him. But at that time I didn't know.

Q. In other words, Mr. Pineda, practically all your testimony is based upon your putting two and two together, isn't it?

A. No, when an order goes up, no one comes down and tells you who the order is for, but when you see the man come down and inspect the order, you know the order we have been putting up all this time was for him.

Q. How large an order was it?

A. I would say from about 60 to 75 cases of eggs.

Q. How many? A. From 60 to 75 cases.

(Testimony of Henry Lester Pineda.)

Q. Were there 60 to 75 cases of eggs on the plant floor at the time Mr. Monchar*s*h was speaking? A. Oh, yes.

Q. There were? A. Yes.

Q. I mean of those particular eggs?

A. No, the time——

Q. I will withdraw that. Mr. Pineda, on practically all occasions there would be many, many cases of eggs on the premises?

A. That is right.

Q. On this occasion when Mr. Monchar*s*h said those words there were a particular lot of eggs which you described on your direct examination?

A. Yes.

Q. Now, when Mr. Monchar*s*h made those remarks, to whom was he speaking?

A. He was talking to Mr. Nix and myself.

Q. To Mr. Nix and yourself? A. Yes.

Q. Was Mr. Goddard there? A. Yes.

Q. So that there were four people there and he addressed the four of you, is that about it?

A. Yes, but I don't believe Mr. Goddard was opening up the cases.

Q. There were cases of eggs there. Do you know which ice and cold storage company they came from? A. No, I don't.

Q. Did they have a tag on? A. Yes.

Q. Did the tag show whether it was National or Merchants?

A. I don't recall. I just recall seeing some num-

(Testimony of Henry Lester Pineda.)

bers, sort of green—they had green initials and numbers on the boxes.

Q. On the outside of the box?

A. Well, they have a gray card and this was stapled onto the box.

Q. Had you seen them brought into the plant that morning or that day?

A. No, I don't recall if I saw them come in or not.

Q. Do you know how long they had been in the plant of your own knowledge at the time Mr. Moncharsh made these remarks? A. That day.

Q. They had come in that day. Had they come in on a Nye & Nissen truck? A. Yes.

Q. They had. So that the eggs had a cold storage company label on. They were 75 or 80 in number——

Mr. Hippeli: He did not say that, Mr. Faulkner.

Mr. Faulkner: Q. How many were there?

A. I don't know how many of those eggs. I just said we put up an order for [985] about 60 to 75 cases of eggs.

Q. How many cases of eggs had come in from the cold storage plant that morning in the Nye & Nissen truck? A. I do not know how many.

Q. Were there more than your 65 to 70 cases that you put in an order? A. Yes.

Q. Was there a full truckload?

A. Well, I don't remember seeing the truck come in.

Q. You remember an order for 65 to 70 cases.

(Testimony of Henry Lester Pineda.)

Would that represent half of the amount that had come in from the cold storage plant?

A. Well, I would say there would be about close to 90 cases all told maybe.

Q. How many?

A. Close to ninety. They wouldn't be all brought in at one time, see. A certain amount were brought in, and then a certain amount brought in after awhile.

Q. Do you remember on this occasion that certain cold storage eggs were brought in at one time and, then——

A. We always did that.

Q. What?

A. We always did that. I'm not sure on this occasion it was the same.

Q. What is your best recollection of the quantity of cold storage eggs that you saw on this particular occasion on the floor of Nye & Nissen at the time Mr. Moncharsh was talking?

A. I don't recall how many cold storage eggs there were then.

Q. When you say these eggs were cold storage, you base that [986] because they had a little tag on them?

A. That and they were cold, and that is the reason we opened them up and spread them apart, so they would be sort of—take all that dampness off of them, because they get all sweated up.

Q. Did you do that on this occasion?

A. Yes.

(Testimony of Henry Lester Pineda.)

Q. How long did you have them remain open?

A. All the rest of that day and the following night.

Q. So that on the first day, the day that Mr. Moncharsh spoke, all you did was open the case up so the drafts of air and the movement of air would dry them out, is that right?

A. That is right.

Q. Then, when did you next do anything to those cases of eggs?

A. Well, in the meantime the girls were working putting up this certain amount of cases of eggs, and as soon as they were finished with that, we gave them these cases of eggs to work on.

Q. On the first day?

A. Well, some time probably the following day.

Q. The first day you say you opened the boxes up in order to let them dry out? A. Yes.

Q. And they remained that way that day and that night? A. The following night, yes.

Q. Was anything done that day or that night to those eggs? A. No.

Q. The next day something was done, is that right? A. Yes, that is right. [987]

Q. What did you personally do to any of those particular eggs?

A. I helped put them on the bench for the girls.

Q. And you pushed them on a bench and shoved them into the candlers at the aperture marked with an X, is that right? A. That is right.

Q. Then what did you do?

(Testimony of Henry Lester Pineda.)

A. Then when they came out, we got those cases of eggs, put them on the flats there—they used to come out in strips, four strips on each side, and then we put them in the cooler.

Q. Mr. Pineda, when you say four strips on each side what do you mean by that?

A. Well, the case is divided into two sides.

Q. Yes?

A. And the girl would put two strips on each side of each case of eggs. That would make it on top would be four strips.

Q. Where would the strips start from?

A. One strip would go all the way from the outside of the case all the way down to the bottom of it and up on the inside of the case of eggs. It would go around the mapes and fillers.

Q. Mr. Pineda, assuming that these two folders were the eggs that went into the box——

A. Yes?

Q. After they are in the box or, rather, the eggs are in fillers and then they have flats covering them? A. That is right.

Q. Do I understand that this particular quantity of eggs had four strips that would go all the way around like you would tie a box?

A. Yes, they would have two strips that started on [988] the south side of the case of eggs and would go all the way down. That would be one strip. And then the same on this side. When it gets to the top it has four corners, four ends.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: May I have that waste basket, Mr. Welsh?

Q. In other words, they were paper strips, weren't they? A. Yes.

Q. A long piece of paper would go from here down to there and then at a right angle to it, and then when the eggs went in these flaps could go over it, is that right? A. Yes.

Q. That is the manner in which those eggs were being put up? A. That is right.

Q. That is not the usual method of putting up eggs, is it? A. No.

Q. Did the girls candle those eggs and were 65 or 70 cases of eggs put up in that form?

A. Yes.

Q. What was done with the eggs then?

A. Well, we had put up a first order of eggs and then placed them on the floor, of the same amount; and then we got these cold storage eggs. We did the same thing, and put them in the cooler.

Q. When you say the first order of eggs——

A. Say the order was for 70 cases of eggs. We gave them 70 cases of fresh eggs, and we went through the same procedure, going through the strips of paper and everything, and then we placed them on the outside of the bench there, right next there on the floor. [989]

Q. You referred to 70 cases of fresh eggs. Where did those eggs come from before they were sent into the candling room? A. From the plant.

Q. From the freezer? A. No.

(Testimony of Henry Lester Pineda.)

Q. From whereabouts?

A. From the floor.

Q. From the floor? A. Yes.

Q. Do you know how long those eggs had been on the floor? A. No.

Q. Do you know where they came from?

A. No.

Q. Do you know whether they had been there a day or a week or two weeks?

A. No, I don't know how long.

Q. Do you know anything about the antecedents of the eggs that were first given to the girls to candle on that occasion? A. No.

Q. Then you do not know anything about whether they were fresh eggs or not, do you?

A. I knew they were fresh. They were not storage tag. The storage tag eggs came in—they had this big, sort of heavy with white paper—when they come from storage they had that. We had to open it up and screw those cards down—that was one way. They were sweating with the cold. They didn't have any oil in them.

Q. Mr. Pineda, you just told me you did not know anything about where those eggs came from, how long they had been in the plant, or where they had come from.

A. But I can tell a processed egg if I see it.

Q. You can tell a processed egg?

A. If I seen it, yes.

Q. What is a processed egg?

A. An egg that has been oiled for storage.

(Testimony of Henry Lester, claimant.)

Q. What has a processed egg got to do with whether it is cold storage or not?

A. Usually when they put them in cold storage they process them.

Q. In other words, the eggs that you designated as fresh were not processed eggs?

A. They had no oil on them, no.

Q. So they were not processed? A. No.

Q. And that is one of the reasons that you assumed they were fresh?

A. And they had no cold storage tag either.

Q. How many cases of those eggs were candled by these girls?

A. I don't know how many cases were candled, but I know we got 60 or 70 for the order we wanted.

Q. And they were packed in that form?

A. Yes.

Q. And how were the cases marked of those eggs? How were those cases marked?

A. I don't recall.

Q. Did they have a Nye & Nissen label on?

A. Oh, yes.

Q. What color?

A. I believe they were blue. I don't recall. I believe they were blue though.

Q. Now, the eggs that you have designated as having come from a cold storage plant, did they have a Nye & Nissen label on them?

A. I don't remember.

Q. You don't remember? A. No.

(Testimony of Henry Lester Bundle.)

Q. Did they have a label on of any kind? [991]

Mr. Hippeli: When is this? Before or after they were candled, Mr. Faulkner? I object to that as no proper foundation having been laid. The witness has testified to the cases having come from cold storage and having been candled. I do not think it is clear what Mr. Faulkner is referring to at this time.

Mr. Faulkner: He answered it.

The Court: Read the question.

(Question read.)

The Witness: Did that mean before we candled them or after we candled them?

Mr. Faulkner: Q. Did those cases of eggs which you have designated as coming from cold storage have a label on at any time of any kind?

A. After we candled them, yes.

Q. Before you candled them?

A. I don't remember.

The Court: The jurors may take a recess for a few minutes.

(Recess.) [992]

The Court: You may proceed, gentlemen.

Mr. Faulkner: Q. Now, do you recall whether after these eggs which you say came from a cold storage plant, the cases that we were talking about in your examination before the recess, whether after they were candled, whether a label was put on them. A. Yes.

Q. Did you put a label on?

(Testimony of Henry Lester Pineda.)

A. I believe I put some on, yes.

Q. What color? A. Blue.

Q. What size eggs were they? A. Large.

Q. What size eggs were in the fresh eggs?

A. Large.

Q. That you have mentioned. A. Large.

Q. What quality of eggs was involved in the Army order, according to the terms of the Army order, do you know?

A. As far as I can recall, I am not quite sure, but I believe it was—I can't recall the type—I believe it was Large Grade A; I don't recall.

Q. I asked you what was the Army order in respect to the size of the eggs.

A. As far as I can remember it was large Grade A.

Q. You saw the order?

A. No, I didn't see the order.

Q. Then you don't know what the order called for?

A. I never saw any order, never did see any order.

Q. You observed the girls' candle some eggs which you have designated heretofore as Fresh eggs? A. Yes.

Q. They candled 65 or 70 cases?

A. Yes, that's right. [993]

Q. Did you observe the candling?

A. You mean did I see them candling from inside the candling room?

Q. Yes.

(Testimony of Henry Lester Pineda.)

A. Yes. At times I used to go in during recess.

Q. On this occasion did you go in?

A. Yes. I would go in there all the time.

Q. You went in all the time? A. Yes.

Q. Well, you stacked those eggs up some place, didn't you?

A. We placed them one high, we didn't stack them all the way up; we placed them one high.

Q. On the floor?

A. Yes, on skids.

Q. Those cases all came out with these paper tapes around them? A. Yes.

Q. Were the paper strips sealed?

A. Not on the fresh ones, no.

Q. In other words, none of the papers were sealed on the fresh eggs when they came out from the candling room? A. No.

Q. After that was all completed were these eggs which you called cold storage eggs candled that day, the same day as the others?

A. They might have started, yes. In the meantime we were opening up the other cases of eggs, the girls were beginning to candle some of the fresh ones.

Q. I understood they candled the fresh eggs first.

A. Yes. I say while we were opening up the cold storage eggs the girls were beginning to candle some of the fresh eggs. So much of the time they

(Testimony of Henry Lester Pineda.)

candled those eggs, and so much of the time they [993-A] would put up the city orders.

Q. Then you were opening the so-called cold storage eggs on a day the girls were candling these so-called fresh eggs? A. Some of them, yes.

Q. The fact is, is it not, Mr. Pineda, that girls were candling eggs down there every day?

A. Yes.

Q. Eight or ten girls in fact were candling eggs from morning to night.

A. Not very day.

Q. Practically every day?

A. Well, most of the time it would be five girls. When we got real busy it would be eight.

Q. Isn't it true that practically every day five girls, eight girls, maybe as high as ten girls, were candling eggs all the day? A. Yes.

Q. But you can remember an incident in which they did, on this particular day, they were candling a particular lot of 65 cases of eggs? A. Yes.

Q. And that you were opening the tops of some cold storage eggs?

A. Yes, because we repeated this quite a few times.

Q. This is only one occasion that you are talking about.

A. Yes, I know, but that is why I can remember it.

Q. You can remember it because you were there?

A. Yes, that's right.

(Testimony of Henry Lester Pineda.)

Q. You remember this incident in February, 1941, about this time?

A. Yes—no—yes,—that is January, February, 1941. [994]

Q. You remember the incident and the fresh eggs coming into the candling room at the very time that you were opening the tops of the so-called cold storage eggs?

A. Yes, the same day.

Q. On a normal day, how many cases of eggs would five or six girls candle?

A. Naturally, it depends what they have to do. I would say over a hundred, easy.

Q. You mean one, or all of them together?

A. Yes, they have other things to do. Sometimes they put them in cartons, sometimes they have to make cartons; it all depends.

Q. After the cold storage eggs—the next day there was some candling of the cold storage eggs?

A. Yes.

Q. They candled one day on the eggs in cold storage, these eggs you called cold storage eggs?

A. Well, when they were candling they had to take out the leakers and the frozen yolks and the rots.

Q. Were there frozen yolks in those eggs?

A. Yes.

Q. You have, then, a distinct recollection of eggs that came from an icehouse and cold storage plant in which some of the eggs were frozen?

A. Some of the yolks, yes.

(Testimony of Henry Lester Pineda.)

Q. How many eggs would you say were frozen in that lot from——

A. I couldn't tell you how many.

Q. Did you report that to anyone at Nye & Nissen? A. Yes.

Q. You did? A. Yes.

Q. Whom did you report it to?

A. Mr. Goddard.

Q. Did they still accept those eggs from the cold storage plant after you had brought to their attention the fact there [945] were frozen eggs in the boxes?

Mr. Hippeli: He has not testified that there were frozen eggs. He said there were frozen yolks.

Mr. Faulkner: Well, if a frozen yolk is not a frozen egg, I don't know what the difference is.

Mr. Hippeli: Well, ask the witness.

Mr. Faulkner: Well, he doesn't know that, either.

The Court: Proceed, gentlemen.

Mr. Faulkner: Q. Notwithstanding the fact that you had reported that some of the yolks of these eggs were frozen Nye & Nissen retained these eggs which you say came from an ice and cold storage company?

A. Yes, but the quantity was not much.

Q. How do you know the yolks were frozen?

A. Because I had to break them up when they accumulated enough for me to do a little bit of breaking out. When things got slack I would break

(Testimony of Henry Lester Pineda.)

them and put them in with the others, put them into whole eggs.

Q. So this case was placed in the breaking room?

A. No. You see, all these eggs were coming out—when I go in there I ask the girls, "How are you coming out?" They showed me some frozen yolks, because at the time the eggs were so cold they complained that their hands were getting cold. They told me some had frozen yolks. I said, "What will we do with them?" They told me to take them in the breaking room.

Q. Who said that? A. The girls. [996]

Q. What girls?

A. I don't know who answered the question, but I know we all were sitting down during the recess, and we were talking about it.

Q. You didn't break them?

A. Yes. First I went to Ruby. I told him. Every time I broke anything in the breaking room they took a flat, the cases of eggs were brought in, if it didn't amount to much, if it was not high enough, they would say the eggs were all shaken before. I used to argue about that. I used to try to protect myself. If the yolk is frozen they will thaw out, but the frozen yolk won't throw out—this is a whole yolk, it comes out like a ball, you can't do anything with it, you have to throw it away.

Q. That is the type of egg that you saw in this particular shipment? A. Some, yes.

Q. Into how many grades of eggs did the girls candle those eggs? A. One.

(Testimony of Henry Lester Pineda.)

Q. Just one?

A. Yes, and then take out the leakers and the frozen yolks and put them into different boxes.

Q. Was this quantity of eggs from cold storage candled immediately upon taking the leakers and broken eggs out? A. And the rots.

Q. And the rots? A. That's right.

Q. So that only one case, one box of eggs came out from the right-hand side of the candler?

A. Yes, from the right, and, of course, the leakers and the rest, they would have a case [997] for the others——

Q. These cases of eggs that you are talking about now that came from the icehouse, according to your testimony, the cold storage plant, were they also wrapped with these four paper strips around them?

A. You mean the eggs that were given to me to break?

Q. No; the eggs that were candled that went out onto the floor of Nye & Nissen. A. Yes.

Q. They had the paper strips?

A. Yes, yes.

Q. How many of those cases were candled upon that occasion, cases of cold storage eggs that had strips on them?

A. I don't remember how many, but we had—we got that, like I say, 60 or 70 cases.

Q. What was done with those cases?

A. They were placed in a cooler.

Q. Placed in the cooler? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Is that the same as the freezer? A. No.

Q. What is put in the freezer?

A. The freezer, they put anything, like whenever they got a can of whole eggs they would put in the freezer, and the yolks could be put in the freezer, butter, sweet butter.

Q. Cases of eggs were not put in the freezer?

A. No.

Q. Cases of eggs were always contained either in the cooler or on the floor of the plant?

A. That's right.

Q. These particular eggs were placed in the cooler? A. Yes. [998]

Q. How long did they remain there?

A. They remained there, I think Colonel Hand would come in to inspect in the morning, so that we got through, after we got through with an order we placed it in the cooler, and the following day he would come in and inspect it. They would stay all that night.

Mr. Faulkner: May I have the answer read, your Honor?

The Court: Read it.

(The record was read by the reporter.)

Mr. Faulkner: Q. Mr. Pineda, the eggs in that cooler, were there other eggs in that cooler except those particular eggs?

A. I don't recall if they had any other eggs. We usually had one butter lying around there, but I don't recall if we had any eggs.

(Testimony of Henry Lester Pineda)

Q. Is your best recollection that the only eggs in the cooler that night when they were put in there were these eggs that had been candled that had come from an ice and cold storage plant?

A. I wouldn't want to say "Yes" or "No" to that; I don't remember.

Q. When the eggs had these four pieces of paper, two on each side, that came over the top, were they sealed together, pasted together, before they went into the cooler? A. Yes.

Q. They were? A. Most of them, yes.

Q. Did you, personally, see Colonel Hand come in there? A. I saw him when——

Q. Just a minute.

A. When he came to inspect them, yes. [999]

Q. How many days elapsed between the time of the candling of the eggs and the time Colonel Hand came in?

A. I would say the following day that we got—like the night these storage eggs placed in the cooler, the following day he would come about 9:30 in the morning, around that time.

Q. You definitely remember him coming the following day? A. Yes.

Q. Do you know when he was requested to come?

A. No.

Q. He examined those eggs in your presence?

A. You mean by examining them, candling them?

Q. Yes.

A. Candled them, no, not in my presence.

(Testimony of Henry Lester Pingatore.)

Q. Did he select any eggs to candle in your presence? A. Yes.

Q. How many men did he have with him?

A. I don't recall how many.

Q. He had at least one, didn't he?

A. He usually always did have, but I don't remember how many.

Q. Regardless of whether you know how many, he always had at least one man with him, didn't he?

A. I don't know.

Q. Do you ever remember Colonel Hand ever coming into the plant of Nye & Nissen when he was not accompanied by at least one soldier?

A. Well, I have seen him walk around there by himself. I couldn't tell if he had another man, another man in the candling room and another man had gone ahead of him. I seen him walking around the Nye & Nissen plant. He might have had just a driver that day who stayed in the car. You will [1000] have to ask Colonel Hand.

Q. This occasion that he came in, you do not remember whether he had a man with him, or not, but you did see him select some cases, is that right?

A. Yes.

Q. What eggs did he select?

A. The eggs we had on the floor and the fresh eggs.

Q. How did he select them, what did he do?

A. I don't remember whether he put his mark with chalk. I know he had some with chalk marks and some with pencil marks. I don't recall whether

(Testimony of Henry Lester Pingel.)

he picked his out, but they were right out, you could just pick them out, they were not stacked so high so you couldn't get at them, like a big pile.

Q. They were one high? A. Yes.

Q. There were 65 or 70 cases one high on the plant floor of Nye & Nissen?

A. Most of them were one high, but like near the end we put two high.

Q. Were they on the floor?

A. Most of them, yes.

Q. How many cases of eggs did he pick out?

A. I don't recall how many. I would say about seven.

Q. Seven?

A. Something like that; I don't recall.

Q. Did he take them any place?

A. No. We went outside the bench. Berman was outside at the bench and he goes into the candling room.

Q. But those cases were sent in to him by employees of Nye & Nissen, do you remember?

A. Yes.

Q. Did he candle the number that he selected?

A. Yes. [1001]

Q. Were you there all the time?

A. No, not all the time.

Q. Where were you when you were watching him candle the eggs?

A. I was helping Mr. Goddard.

Q. Doing what? A. Changing the eggs.

Q. What? A. Changing eggs.

Q. Changing the eggs. Changing what eggs?

A. Those eggs that Colonel Hand had selected and had picked out as his sample of the cases that he wanted, then we would get those eggs and put them on the flat we had there and then Mr. Nix and Mr. Goddard would truck these eggs away, they would remove this quantity on the dolly and put them into the middle box. Then the rest of us would take some of the cold storage eggs and place them where the other eggs were.

Q. So we have a situation where about 70 cases of eggs are laid out flat on the floor of the plant of Nye & Nissen and Colonel Hand coming in and indiscriminately picking seven cases of these eggs there to be taken over to the candling bench?

A. Yes.

Q. Then Colonel Hand goes into the candling room, is that right? A. Yes.

Q. Did his assistants go with him?

A. If he had one I believe he did, they always went with him.

Q. It is your testimony, then, Mr. Pineda, that all the time that Colonel Hand inspected eggs in the plant of Nye & Nissen that his assistants went in the candling room with him? [1002]

A. If he had one, yes.

Q. Never left a man out on the floor?

A. Not that I can recall.

Q. The general practice at that time was for the Army inspector to leave a man out on the floor, wasn't it? A. No.

(Testimony of Henry Lester Pineda.)

Q. Do you remember testifying on your direct examination how the Army man was left out on the floor and how Mr. Goddard tried to get him away by saying his truck was parked——

A. Yes, but that man was placed especially for that, he was a sergeant, not an officer.

Q. That was not the general practice?

A. No.

Q. That was a special occasion?

A. I guess it was.

Q. While Colonel Hanil is inside the egg candling room with the six or seven cases of eggs that he selected; you and Mr. Nix, was it?

A. Mr. Nix and Mr. Goddard.

Q. Took the 65 or 70 cases of eggs that were laid out flat on the floor and you put them on a tray and put the dolly under that tray and moved those eggs in that fashion into the cooler?

A. Yes, the middle cooler.

Q. The middle cooler? A. Yes.

Q. Then you took the 65 or 70 cases of eggs that you say had come out of a cold storage plant and you put those on a flat and brought them out onto the floor of Nye & Nissen and arranged them in a similar pattern?

A. They were already on flats in the cooler.

Q. When you brought them out on flats in the cooler? A. Yes.

Q. Did you take all of the Fresh eggs away before you started bringing cold storage eggs out there?

(Testimony of Henry Lester Pineda.)

A. All with the exception of about two or three.

Q. So if there were 70 cases and Colonel Hand had seven, about 60 cases had been removed from that floor and taken into the cooler? A. Yes.

Q. So there would be one stage of that operation that if the Colonel had looked out, just raised his eyes above the level of where he was candling the eggs, he would no longer see the eggs that he had just inspected?

A. No, he can't raise up his eyes and look outside. [1004]

Q. Mr. Pineda, the face of that candling room had an opening that went the whole length of the candling room, like the flap of this folder, and went down like that, isn't that right?

A. No, didn't go the full length of the candling room.

Q. Didn't go, in the 324 Townsend Street plant, unlike the one on Missouri Street, wasn't there just one continuous opening there that opened downward?

A. No, not one continuous opening, no. It was sectioned off.

Q. It was sectioned off? A. Yes.

Q. Into how many sections?

A. I believe either two or three. I don't remember.

Q. At all events, it opened down, didn't it?

A. Yes.

Q. And when it was open and down the men

(Testimony of Henry Lester Pineda.)

on the outside used it as a counter to place things on, is that right? A. If it was open.

Q. If it was open?

A. But it would be open during the winter time because the reason they have that, if the girls in the summer time get kind of warm——

Mr. Faulkner: I have not asked the witness any question, your Honor. He just keeps talking. I ask the Court to instruct the jury to disregard it.

The Court: It may go out.

Mr. Hippeli: I would like to have the question read first. I think he asked if the vent was open.

The Court: Read the question.

(The last question was read by the reporter.)

Mr. Faulkner: I ask that the rest go out, your Honor.

Mr. Hippeli: I do not think it should go out. He explained how it was open on that particular occasion.

The Court: Read the answer.

(Answer read.)

The Court: The question and answer may stand.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Have you completed your answer? A. No, he stopped me.

Q. Finish it, please.

A. In the summer time, when girls get kind of warm——

Mr. Foulkner: It is not in response to my ques-

(Testimony of Henry Lester Pineda.)

tion, your Honor, at all. I asked him if it was open.

The Court: Very well, proceed. Reframe your question.

The Witness: He didn't ask me if it was open. He told me it was open.

Mr. Faulkner: Q. On that occasion Colonel Hand was there, was that opening open or not?

A. It was closed.

Q. Are you positive of that?

A. Yes, positive, because we made sure it was closed.

Q. Then you remember actually closing it?

A. I don't remember whether I closed it, or not, but any time an inspector went to that candling room that thing was closed.

Q. In other words, at some time that day you went over there and closed that opening, is that right?

A. If I didn't, someone [1006] else did, but it was closed.

Q. But at all event you have a recollection in this instance it was closed on that day before Colonel Hand went in there? A. Yes.

Q. And then you also have a recollection that some time that day it was open, have you not?

A. No, I didn't say that it was open. I said if it was open we made sure it was closed. Like I told you before, it was very seldom open in the winter time. You always say it was open. I didn't.

Q. At all events, sometime after the Colonel

(Testimony of Henry Lester Pineda.)

was there, whether that aperture was open or closed, there was an occasion where, if he had looked out or stepped out or if the man with him had stepped out, he would have found none of his eggs were on the floor of the Nye & Nissen plant, is that right?

A. Yes, he would, that is right.

Q. After you had moved all of these fresh eggs, then you and Mr. Goddard went in and you started bringing out what you have called cold storage eggs?

A. Mr. Goddard, Mr. Nix, and even Mr. Menges helped us.

Q. All four of you? A. Yes.

Q. You then took those cases and you spread them out in a similar position that the other eggs were in, is that right? A. Yes, that is right.

Q. Did you try to arrange them about the same way?

A. There is no way of arranging them. Just piling them straight [1007] up and down. That was simple. All we did was get a flat of eggs—this flat of eggs didn't stack the way the other eggs did, criss-cross each other. These stacked straight up and down, and when we get three or four high—it all depends how high you want to put them—then we put two on top, two cases, to tie them so they can truck them in and out without having someone hold the cases.

Q. You told us a while ago all of these eggs were laid flat on the floor?

A. Not on the floor. I said some were laid on skids. You say on the floor.

Q. On skids, but they were all laid one high?

(Testimony of Henry Lester Pineda.)

A. Yes.

Q. When you were taking them away you would have the eggs that were on the floor one high?

A. No, we piled them on the skids.

Q. That is right? A. Well, not one high.

Q. When you came back with the cold storage eggs you laid them one high on the floor, did you not? A. Yes.

Q. Did you arrange them the same way you did before? A. Yes.

Q. And did you leave spaces on the floor where he had taken out the samples?

A. No, didn't bother with that.

Q. You did not bother with that? A. No.

Q. So the minute the Colonel came back he would immediately see this was a different pack of eggs, because there would be no space from which you had taken the 70 cases of eggs to candle?

A. Not necessarily, because he probably has a certain percentage we have to stick with paper. He had other work to do. He [1008] gives us the orders to go through the motions of sticking the paper. At that time, sometimes in order to stick some paper, maybe the last case of eggs we have to move some of the others forward. So no one can tell whether we move those cases forward or backward, to make it easier for us to stick the paper, or not.

Q. Did you stick the paper on these four corners, or these four pieces of paper on each side of the case after the Colonel said the order passed?

(Testimony of Henry Lester Pineda.)

A. No, they were already stuck. Most of them—we had, oh, I guess, about 20 or 25 that were left open.

Q. Did you stick those? A. Yes.

Q. Why did you leave any open?

A. Well, in case he came outside and saw us sticking up the paper, he would see us sticking some of them.

Q. What reason would there be not to have all the cases with those papers stuck when the colonel could——

A. Supposing he didn't want to candle any more? You don't know what he is going to do. You, yourself, say I can't tell what somebody else is going to do. Supposing he says, "That's all," and walks out? We can go through the motions, and we can start sticking before he gave us the order.

Q. Mr. Pineda, you were preparing an order for a Colonel or an officer of the United States Army to candle. The order, when completed, was supposed to have these pieces of paper encasing the eggs, and the pieces of paper were to be stuck [1009] together, weren't they? A. That is right.

Q. Why weren't they stuck together before the Colonel ever walked into the plant?

A. Because he had to examine them.

Q. He only had to break a piece of paper like that to examine them, didn't he?

A. I know; but then how are you going to stick it together again?

(Testimony of Henry Lester Pineda.)

Q. Was that the reason you left some of them open?

A. The ones we examined were all open because he can get any one. Maybe those are his orders. I don't know.

Q. Of those cases of eggs that were out there, the fresh eggs, all the paper on those fresh eggs, none of the paper had been stuck together?

A. That is right.

Q. Is that right? A. That is right.

Q. So that when he selected them he did not have to break this piece of paper, is that right?

A. That is right.

Q. On the contrary, however, none of the cold storage eggs were stuck together—or they were all stuck together? A. Most of them.

Q. Most of them? A. Yes.

Q. When had that been done?

A. When we first took them out, when the girls got through with them.

Q. When the Colonel got through he then approved that order, whatever it may have been, is that right? A. That is right.

Q. What happened to the cases then?

Mr. Hippeli: Which cases? I object to that question as [1010] ambiguous.

The Court: What cases? Designate them.

Mr. Faulkner: Q. What happened to those cases that were out there on the floor of Nye & Nissen at that time?

A. Fresh eggs, or the storage ones?

(Testimony of Henry Lester Pineda.)

Q. Which were on the floor when he got through?

A. The ones he had been candling, those were still on the floor, and those were still fresh.

Q. Which eggs were on the floor when Colonel Hand got through candling the eggs?

A. What part of the floor? Outside the candling room, or where I had just placed the storage eggs?

Q. Any place, as long as they are on the floor?

A. Then some are storage and some are fresh.

Q. When Colonel Hand got through candling the eggs there were on the floor as part of the order he was inspecting some fresh eggs and some cold storage eggs, is that right?

A. Yes, but right outside of his light in the candling room we would have maybe two or three cases of fresh eggs.

Q. What happened to those cases?

A. The ones outside, the fresh ones, he would stamp them.

Q. You would stamp them?

A. He would, Colonel Hand.

Q. What happened to the cold storage eggs?

A. He would stamp them, too.

Q. When he was all through he had stamped some fresh eggs, eggs that you have described as fresh, and these eggs that you [1011] have referred to as cold storage; is that your testimony?

A. That is right.

Q. Where did he stamp them?

A. He stamped them on the top where the four corners met on each side of the case, and he stamped